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**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**First Appeal No.243 of 2007**

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Bihar State Financial Corporation, Fraser Road, Patna through its Managing Director-Defendant/Appellant…….... .... Appellant/s

Versus

1. Shambhu Prasad Shroff, Sursand Road, Mahsaul, Sitamarhi proprietor of Vinit Udyog Mandir, Sursand Road, Sitamarhi, P.S.& District-Sitarmarhi-Plaintiff/Respondent 1st set.
2. State of Bihar through Collector, Sitamarhi.
3. Director of Industries, Bihar, Patna.
4. General Manager, District Industries Center, Industrial Estate, Sitamarhi.
5. Dr. Mahabir Thakur, S/o not known to the appellant.
6. Smt. Bibha Thakur, W/o Sri M.Thakur both of village-Sitamarhi Town, Station Road-Opposite Sitayan Hotel, P.S.& Town-Sitamarhi.

Defendants/Respondents 2nd set.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Vinay Krishna Tripathi, Adv.

For the Respondent/s : Mr. Ashok Chaudhary, Adv. With Dr. Shobha Choubey, Adv with Miss. Juhi Kumari, Adv.

For the State: Mr. J.S. Arora, S.C.6 with Indrajeet Singh, A.C.-S.C.6.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

ORAL JUDGMENT

**Date: 30-08-2012**

**V.Nath, J.** This appeal has been filed against the judgment and decree dated 22.06.2007 by Sub Judge IV, Sitamarhi in T.S.No. 68/93 decreeing the suit of the plaintiff declaring the take over and auction sale of the hypothecated property of the plaintiff by the defendant corporation as illegal, and leaving it open to the plaintiff to pay the entire liability and get the hypothecated property redeemed as per the contract.

The parties to this appeal, hereinafter for convenience, be referred by their position in the suit.

2. The broad essential facts of the case of the plaintiff is that he was an unemployed person and requested the defendant-Bihar State Financial Corporation (in short, as Corporation) for loan to establish a small scale industry for manufacturing coal briquettes (form of coal widely used in the area). The corporation in March 1979 sanctioned total sum of Rs. 1, 42,000/- to the plaintiff for establishing the industry. The plaintiff thereafter established the industry and started production. However, by accidental fire on 01.08.1980, the Drying Oven, an essential unit of the industry, burnt out seriously affecting the manufacturing and production. The plaintiff immediately made a claim to the Insurance Company but it declined to pay the claim. The plaintiff requested the Corporation to pursue the Insurance Company for payment of the claim but the corporation did not take much interest. The plaintiff also made request to the Corporation to pay the amount of claim for the purpose of a constructing a new Drying Oven and adjust the said amount with the claim amount to be paid by the Insurance Company but the same also did not find favour. As such the plaintiff's industry started suffering loss for want of adequate production. All the more in 1981, the subsidiary amount of Rs. 19,500/- was only sanctioned against the claim of Rs. 43,000/- of the

plaintiff and the corporation even did not consider the recommendation made by its Branch Manager for grant of special capital assistance.

3. The further case of the plaintiff is that due to the consistent indifferent attitude of the corporation by not granting adequate financial assistance, the plaintiff tried to revive the industry by private loans but ultimately due to financial pressure, the production completely stopped in the year 1986. The plaintiff applied before the Department of Industry, Government of Bihar for declaring his industrial unit as sick but that too lingered for long six years till 27.02.92 when it was declared sick. In the meantime, the plaintiff, on the instruction of the Industry department sent rehabilitation project on 26.09.91 to the corporation but that was not considered. Again after the declaration of the unit as sick, the plaintiff on 31.05.92 sent proposal for revival and rehabilitation of the unit but no response was made by the corporation.

4. It is the further case of the plaintiff that Sri. P.P. Sharma, the senior branch Manager of the corporation at its Muzaffarpur Branch on 10.08.92 forcibly took over the entire mortgaged assets of the plaintiff's industry by breaking open the lock, and handed over the same to the defendant no. 6. The plaintiff has alleged that Sri. P.P. Sharma had been in collusion with the defendant no. 6, who is a

Nepali citizen, and with malafide intention Sri Sharma manonevred the things without the knowledge and approval of the corporation which was the only competent authority to exercise power under Section 29 of the State Financial Corporation Act. On these basic facts, the plaintiff has prayed for declaration against the take over and the transfer of his unit to the defendant no. 6 and subsequently to defendant nos. 7 and 8 as fraudulent, illegal and not binding upon the plaintiff. Further the plaintiff has also sought for the declaration that he is not liable to pay interest on the loan amount or any claim of the corporation.

5. The defendant-corporation, the defendant no. 6, and defendant nos. 7 and 8 filed their separate written statements. The corporation in its written statement has accepted that the plaintiff's unit was established with the financial assistance of the corporation but has stated that the plaintiff did not adhere to the scheduled repayment and consistently defaulted. The damage to the Drying Oven in fire affecting the production in the factory has also not been denied. However, it is the case of the corporation that before its Advisory Committee, on 24.08.84, the plaintiff admitted that he was interested in running a petrol pump and thus unable to run his unit and then, the decision was taken to send notice to the plaintiff under Sections 29 and 30 of the State Financial Corporation Act. The notice

was issued on 21.11.84 and served upon the plaintiff. It has also been stated that the special capital loan by way of soft loan was not granted as the plaintiff had already invested 19% of the total cost and the proposal for rehabilitation also could not have been considered before the declaration of the unit as sick which was done only in February 1992.

6. The corporation has further stated that on 31.07.87, the Advisory committee decided to sell the mortgaged assets, and accordingly the sale order was issued on 16.01.92 and after the advertisement for sale in the news papers on 19.01.92 and 20.01.92, the defendant no. 6 submitted his tender on 26.03.92 which was accepted on 30.03.92, and accordingly the order for the sale of the mortgaged assets had been made to him. It has been asserted that Sri. P.P. Sharma was a duly authorized person under the Act to exercise power for taking over and handing over charge and he had legally done all the acts.

7. The defendant no. 6 in his written statement has almost repeated the same facts as disclosed in the written statement of the corporation and has further stated that the intervener defendants joined him as partners in purchasing the unit of the plaintiff and had deposited their share in the sale money and after purchase came in joint possession with him over the mortgaged assets. The intervenor

defendants in their written statement have also stated the same facts.

8. The defendant nos. 7 and 8, who have been impleaded as defendants in the suit are pendente lite purchasers of the mortgaged assets sold to them by the corporation and they sought permission to adopt the written statement of the defendant nos. 2 and 3 which was allowed by the learned court below by order dated 21.04.2006.

9. In view of the pleadings of the parties the learned court below framed altogether 10 issues out of which issue nos. 4, 5 and 6 were material issues and are as follows:-

Issue No.4: Whether the taking over the Vinit Udyog by the defendant 1st party is legal, valid and the same has been acted upon?

Issue No.5: Whether the transfer of Vinit Udyog by the defendant 1st party to the defendant no.6 is valid, genuine and the same has been acted upon?

Issue No.6: Whether the subsequent transfer of Vinit Udyog by defendant 1st party to defendant nos. 7 and 8 is valid, genuine for consideration and the same has been acted upon?

10. The learned court below after scrutinizing the evidence of the parties has come to the finding that the entire action of the Corporation in taking over of the plaintiff's unit and selling the same to the defendants was mala fide, arbitrary and against the provisions of law. It has been further held that the sale of the unit in favour of the

defendant nos. 7 & 8 is also subject to the doctrine of lis pendens. Accordingly, the learned court below has set aside the sale in favour of the defendants and directed the Corporation to resume possession of the hypothecated property from the defendant-purchasers with liberty to the plaintiff to redeem the mortgage according to the contract. It has also been held that the plaintiff is not liable to pay interest on the loan amount or any claim of the Corporation.

11. Heard the learned counsel for the defendant-appellant-corporation and also the learned counsel for the plaintiff-respondent and defendant-purchaser-respondents.

12. Learned counsel for the appellant has firstly submitted that the learned court below has wrongly relied upon principles laid down by the Apex Court in Mahesh Chandra's Case, reported in AIR 1993 SC 935, and decided the suit on that basis. It has been urged that the aforesaid decision has been overruled in a later decision of the Apex Court by a three Judge Bench in the case of Haryana Financial Corporation Vs.Jagdamba Oil Mill 2002(3) SCC 496. It has been contended by the learned counsel that the plaintiff committed default and had never expressed genuine eagerness to run his unit or revive and rehabilitate it, and therefore the corporation was left with no option but to take action under Section 29 of the Act. It has been submitted that the action under Section 29 of the Act has been taken

after service of notice upon the plaintiff in accordance with law. It has been further argued that in view of the default by the plaintiff in repayment of the instalments of the loan, the Corporation was well within its rights to take over the mortgaged assets and auction sale the same for realization of the loan amount and the plaintiff has failed to establish his allegations of malafide, and illegality in the said action of the corporation. It has been pointed out that the decision to proceed under Section 29 of the Act had been taken by the Advisory Committee, which was a statutory body, after assessing the plaintiff's declination to run the unit, and accordingly the subsequent actions taken by Sri. P.P.Sharma, Senior Branch Manager, in selling the mortgaged assets, to defendant no. 6 and taking over the possession over the same were all done in accordance with law and prescribed procedure. It has been further contended by the learned counsel that the learned court below has misconstrued and misinterpreted the evidence on record and has reached to a wrong conclusion against the Corporation.

13. Per contra, the learned counsel appearing for the plaintiff-respondent has submitted that the evidence on record clearly demonstrate that from the very beginning the officials of the financial corporation had adopted indifferent attitude towards the plaintiff and never co-operated in the smooth running of the unit. It has been further

submitted that even after the irreversible damage to the Drying oven, the corporation did not take necessary remedial steps leaving the plaintiff to fend for himself. The service of notice under Section 29 and 30 of the Act has been strongly denied on behalf of the plaintiff-respondent and it has been submitted that in a sudden action, the defendant no. 3, a Senior Branch Manager of the corporation, pounced upon the unit of the plaintiff by breaking open the gate and took away all the articles forcibly although he was not legally authorized to do so. It has been contended that it is only the Board of Directors of the Corporation who could have taken the decision for exercise of power under Section 29 of the Act against the plaintiff but no evidence has been produced to show that such decision has ever been taken by the Board of Directors. Elaborating his submission, the learned counsel has placed the evidence to show that the decision to take the unit of the plaintiff was, in fact, taken by the defendant no. 3 who had no such legal authority. It has next been submitted that the collusive sale of the hypothecated assets by the defendant no.3 in favour of the defendant no.6 had been made without fully advertising the process of sale and in fact the defendant nos. 7 and 8 have been introduced in the picture to make the things cumbersome by way of camouflage. It has been thus urged that the entire action of the officials of the financial corporation was malafide, arbitrary, and illegal which is also

substantiated when the unit was hurriedly sold to the defendant no.6, and thereafter, to defendant nos. 7 and 8, even during the pendency of the suit in which the corporation had already appeared. It has been lastly submitted that the learned court below has reached to the right conclusions which do not require interference in this appeal.

14. In view of the rival contentions of the parties, the following points emerge for consideration in this appeal:

(i) Whether the actions of the Corporation in selling away the mortgaged assets of the plaintiff on 30.03.1992 to the defendant no.6, and then pendente lite to defendant nos. 7 & 8, and taking over the possession of the same on 10.08.92 were malafide, illegal and in violation of the provisions of statute?

(ii) Whether in the facts and circumstances of the case the plaintiff is entitled to the reliefs as claimed?

(iii) Whether the impugned judgment is sustainable in law as well as on facts?

15. The basic facts are not in dispute that the plaintiff set up a Small Scale Industry in the name and style Vinit Udyog for manufacturing coal briquettes with the financial assets of the corporation which granted him the loan upon the mortgage of the machineries and tools of Industries and also the land of the plaintiff.

The amount of loan was to be repaid in accordance with the agreed schedule of repayment. It is not in dispute that soon after the industry started production, the Drying Oven, which was essential equipment, burnt out. It is the case of the plaintiff that in absence of the Drying Oven, the production was substantially affected resulting in loss to the plaintiff and his attempt to realize the claim for the burnt out Drying Oven from the Insurance Company did not materialize in time and even the Corporation did not seriously pursue the matter with the Insurance Company. The plaintiff has alleged that the Corporation even thereafter did not provide necessary financial assistance to the plaintiff for revival of the unit and ultimately it was declared sick by the Department of Industries but even then the defendant no.3 forcibly took over the possession of the hypothecated assets of the plaintiff after selling it to the defendant no.6, and thereafter it was sold to defendant nos. 7 & 8 during the pendency of the suit when the defendant no.6 did not deposit the sale price. The corporation has denied the allegations and put the blame on the plaintiff with assertion that the plaintiff was not interested to run the Industry rather he was more interested in having a petrol pump business. The corporation has justified the actions taken under Section 29 of the State Financial Corporations Act (In short as Act) and has asserted that the same had been taken after notice to the plaintiff.

16. Point No.1: It has been submitted on behalf of the plaintiff that the decision to exercise the power under Section 29 of the Act is to be taken by the Board of Directors of the corporation but the defendant no.3, who was only a Senior Branch Manager of the Corporation, in collusion with the defendant no.6 passed the order under Section 29 of the Act, sold the mortgaged assets of the plaintiff to the defendant no.6 and handed over the possession to him after forcibly dispossessing the plaintiff. In the written statement the Corporation has not stated that the decision to exercise the power under Section 29 of the Act against the unit of the plaintiff was taken by the Board of Directors of the Corporation. Instead it has been stated that the Advisory Committee, being a statutory body, took the decision to proceed against the plaintiff's unit under Section 29 of the Act and further in paragraph 15 of the written statement it has been stated that Sri.P.P.Sharma was a duly authorized person under the Act to exercise power of taking over and handing over of the mortgaged assets and he had legally done all the acts.

17. Section 29 of the State Financial Corporations Act, 1951 provides as follows:

S. 29: Rights of Financial Corporation in case of default:

(1) where any industrial concern, which is under a liability to the financial corporation under an agreement, makes any default in

repayment of loan or advance or any installment thereof or in meeting its obligation in relation to any guarantee given by the corporation or otherwise fails to comply with the terms of its agreement with the financial corporation, the financial corporation shall have the right to take over the management or possession or both of the industrial concerns, as well as the right to transfer by way of lease or sale and realise the property pledged, mortgaged, hypothecated or assigned to the financial corporation.

(2) Any transfer of property made by the Financial Corporation in exercise of its powers under Sub Section (1), shall vest in the transferee all rights in or to the property transferred as if the transfer had been made by the owner of the property.

(3) x x x x x x x x

(4) x x x x x x x x

18. By the provision of Section 9 of the Act, the powers of the Financial Corporation stand vested in a Board of Directors which has also been vested with the powers of general superintendence, direction and management of affairs and business of the Financial Corporation. It would be apt to notice this provision;

19. “Section 9:-Managements:(1) The general superintendence, direction and management of affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all

powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by this Act expressly directed or required to be done by the Financial Corporation in general meeting.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman, managing director or the whole time director".

20. From the aforesaid two provisions it is clearly discernible that the decision to take over the management or possession of an Industrial concerns as well as the right to transfer the same by way of lease or sale is to be taken by the Board of Directors of the Corporation. However, the power of the Board of Directors, under its direction, may also be exercised by the Chairman, Managing Director or the whole time Director. In the present case it has not been stated in the written statement that the Board of Directors had taken the decision to take over the industrial concern and sell the hypothecated assets of the plaintiff. There is also no averment that the Board of Directors had directed the Chairman or the Managing Director or the whole time Director to exercise its powers, and thereafter the decision to proceed against the plaintiff had been taken by any of the said authorities. Sri P.P.Sharma is admittedly a Senior Branch Manager of the Corporation posted at the relevant time in its Muzafarpur branch.

There is no averment in the written statement by the Corporation that he had ever been delegated the power to act under Section 29 of the Act, and even otherwise also he could not have been delegated the said power in view of the provision of Section 9(2) of the Act as he was admittedly neither the chairman nor the managing director nor the whole time director of the Corporation. In absence of the necessary pleading or even materials on record to establish that the Board of Directors of the Corporation or any authority, to whom the said power could have been legally delegated, had taken the decision to proceed against the plaintiff in exercise of the power given under Section 29 of the Act, the entire action of the sale of the Industrial concern and hypothecated assets of the plaintiff and the subsequent take over becomes illegal and without jurisdiction.

21. It has been submitted by the learned counsel for the appellant that the Advisory Committee which is a statutory body in fact had decided in its meeting on 24.08.84, in which the plaintiff was also present, to send notice to the plaintiff under Section 29 and 30 of the Act. It has been further submitted that even after the service of the said notice the plaintiff did not repay the outstanding dues and then on 31.07. 1987 the Advisory Committee decided to take action for sale of the unit of the plaintiff. The learned counsel for the plaintiff however has denied any decision by Advisory Committee in his presence. The

appellant has relied upon Ext.G/5 to show that the meeting of the Advisory Committee (legal and default cases) was held at Muzaffarpur on 24.08.1984 in which the plaintiff also was present and the decision to proceed under Section 29 of the Act had been taken. The perusal of this Ext.G/5 reveals that it does not bear signature of any authority or any member of the Advisory Committee and it also does not appear to be a duly certified copy of the proceeding of the said Advisory Committee. No other corroborating evidence like the minute book of the proceeding bearing the signatures of the members of the said Advisory Committee has been produced on behalf of the defendant-appellant to substantiate the writings on the Ext.G/5. As such no reliance can be placed upon the Ext.G/5 in order to fasten the plaintiff with the knowledge of the order under Section 29 of the Act. It has also been submitted that on 31.07.1987 the said Advisory Committee decided to take action for the sale of the unit but again the decision by the Advisory Committee has not been produced so that the reasons forming the basis of the said order could be appreciated. The letter dated 09.09.87(Ext.B/8) issued by the Deputy Manager has been relied upon in support of the decision taken by the Advisory Committee (legal and default cases) on 31.07.87. The contents of this Ext.B/8 reveals that the decision taken by the Advisory Committee on 31.07.87 for expediting the action for sale of the unit has been quoted

there but the later portion of the letter proceeds contrary to the decision of the Advisory Committee whereby the plaintiff has been requested to make payment failing which the action for sale was to be taken. It is strange that when the Advisory Committee had already directed for expediting the action for sale of the unit, how the request could have been made to the plaintiff for payment of the dues deferring the implementation of the said decision by the Advisory Committee. This letter, therefore, does not support the submission on behalf of the appellant.

22. On behalf of the defendant-corporation, no provision under the Act could be pointed out on the basis of which the Advisory Committee (legal and default case) could have exercised the power under Section 29 of the Act. The corporation has been vested with power under Section 21 of the Act to appoint an advisory committee but the jurisdiction of the said committee is limited only for the purpose of assisting the corporation in the efficient discharge of its function. It has not been vested with any decision making power. No other provision in the Act or regulation could be pointed out on behalf of the appellant vesting the power to the Advisory Committee to take decision under Section 29 of the act.

23. In view of the discussion made in above paragraphs, the conclusion is inevitable that the Board of the Directors of the

Corporation or any of its legally delegated authority never took a decision under Section 29 of the Act to proceed against the industrial concern of the plaintiff. The orders passed by the advisory committee or by the defendant no. 3 Sri P.P.Sharma to sell and take over the industrial concern of the plaintiff under Section 29 of the Act were clearly without jurisdiction and the actions taken on that basis thus cannot be legally sustained.

24. The learned counsel appearing on behalf of the appellant has next placed reliance upon Ext. B/9, which is the order dated 16.01.92 passed by Sri P.P. Sharma Senior Branch Manager for taking over and sale of the mortgage assets under Section 29 of the Act of the plaintiff's industrial unit, and has put emphasis that this order was passed in the exercise of the delegated power to him being R.M./Senior Manager. The further reliance on behalf of the appellant has been placed upon Ext.G which is the order dated 30.03.1992 for sale of the mortgaged assets, again passed by Sri P.P.Sharma in purported exercise of the delegated power. However, as said earlier, there is no averment in the written statement that the Board of Directors of the Corporation ever decided to proceed against the plaintiff under Section 29 of the Act or ever delegated the said power to the Advisory Committee or to the Senior Branch Manager. In this view of the matter, these orders have no validity in the eye of law, and

only give credence to the case of the plaintiff regarding illegal and malafide exercise of the power by Sri.P.PSharma, the then branch manager.

25. At this juncture, it would be relevant to notice Ext. G/3 and G/4 adduced in evidence by the defendant-corporation. These two exhibits are the orders dated 30.06.2004 and 17.12.2004 with regard to the sale and handing over the possession of the mortgaged assets in favour of the defendant no. 7 and 8. These orders have been passed by the Managing Director of the Corporation in the exercise of the power under Section 29 of the Act as delegated by the Board of Directors of the Corporation. These two exhibits completely militate against the case of the appellant that the advisory committee or the defendant no.3 had the delegated power to act under Section 29 of the Act.

26. The plaintiff has stated that Sri P.P. Sharma was all along in collusion with the defendant no.6, and with ill motive to transfer the industrial concern of the plaintiff to defendant no.6, he passed the order for sale in purported exercise of power under Section 29 of the Act and thereafter also forcibly took over the mortgaged assets of the plaintiff. In order to establish the allegations, the plaintiff has adduced documentary evidence. The Ext.B/10 is a letter dated 17.01.1992 written by Sri. P.P.Sharma to the advertisement manager, the Times of India, for publication of the sale notice in the two newspapers. Ext.E is

the tender notice for sale of different units including the unit of the plaintiff. However Ext.F contains the decision dated 05.02.92 of the tender committee wherein it had been recorded that the re-advertisement had to be done as no tender had been received. The advertisement, already made, on 19.01.1992 and 20.01.1992 has also been referred to in Ext.F and apparently no tender was received in response to the said two advertisements compelling the committee to take the decision for re-advertisement. This decision had been taken by the members of the Committee and bears the signature of its three members which included Sri P.P.Sharma the Senior Branch Manager. Curiously, however, there is no averment in the written statement of the defendant corporation that the re advertisement was made, in pursuance to the decision of the tender committee, inviting fresh tenders for the sale of the units including the unit of the plaintiff, and the statement has been made that in reference to the advertisement dated 19.01.1992 and 20.01.1992 the tender was submitted by the defendant no.6 on 26.03.1992 and was accepted on 30.03.92. There is no statement that the aforesaid tender by defendant no.6 on 26.03.92 was ever placed before the tender committee and accepted by it rather Ext.F shows that no tender was received in response to the advertisement dated 19.01.1992 and 20.01.1992. Further the order of sale dated 30.03.92(Ext.G) in favour of the defendant no.6 has been

issued by Sri.P.P.Sharma wherein also no mention has been made about the decision by the tender committee to accept the tender of the defendant no.6. No documentary evidence has also been brought on record by the defendant corporation to show that after the decision by the tender committee on 05.02.92, fresh advertisement had been made inviting fresh tenders and the decision to accept the tender of the defendant no.6 has been taken by the tender committee. These facts taken together suggest absence of transparency and fairness in selling the mortgaged assets to the defendant no.6 by the defendant no.3 Sri P.P.Sharma.

27. Much emphasis has however been laid by the learned counsel of the appellant on the fact that the decision in Mahesh Chandra's Case reported in 1993(2) SCC 279, which has been relied upon by the learned court below for its decision, has been overruled by the Apex Court in the case of Haryana Financial Corporation Vs. Jagdamba Oil Mills(2002(3)SC 496 and on this basis it has been submitted that the action of the Corporation for realization of its outstanding dues against a defaulter-loanee should be evaluated liberally. However, this aspect has been considered by the Apex Court in a later decision in the case of Gajraj Jain Vs. The State of Bihar(2004(7)SCC 151) wherein observations made in the case of S.J.S. Business Enterprises (P) Ltd. Vs. The State of Bihar

(2004(7)SCC 166 has been quoted with approval as follows:

**"…It is axiomatic that the statutory powers vested in State financial corporation under the State Financial Corporations Act, must be exercised bona fide. The presumption that public officials will discharge their duties honestly and in accordance with the law may be rebutted by establishing circumstances which reasonably probabilise the abuse of that power. In such event it is for the officer concerned to explain the circumstances which are set up against him. If there is no credible explanation forthcoming the court can assume that the impugned action was improper (see *Pannalal Binjraj v. Union of India*, AIR at p.409.) Doubtless some of the restrictions placed on State financial corporations exercising their powers under Section 29 of the State Financial Corporations Act, as prescribed in *Mahesh Chandra v. Regional Manager, U.P. Financial Corpn.* are no longer in place in view of the subsequent decision in *Haryana Financial Corpn.v. Jagdamba Oil Mills*. However, in overruling the decision in *Mahesh Chandra* this Court has affirmed the view taken in *Chairman and Managing Director, SIPCOT v. Contromix(P) Ltd.* and said that in the matter of sale under Section 29, the State financial corporations must act in accordance with the statute and must not act unfairly i.e. unreasonably. If they do, their action can be called into question under Article 226. Reasonableness is to be tested against the dominant consideration to secure the best price**

**for the property to be sold.**

**'This can be achieved only when there is a maximum public participation in the process of sale and everybody has an opportunity of making an offer. Public action after adequate publicity ensures participation of every person who is interested in purchasing the property and generally secures the best price.'(SCC p. 601, para 12)**

**18. Adequate publicity to ensure maximum participation of bidders in turn requires that a fair and practical period of time must be given to purchasers to effectively participate in the sale. Unless the subject matter of sale is of such a nature which requires immediate disposal, an opportunity must be given to be possible purchaser who is required to purchase the property on 'as-is-where-is basis' to inspect it and to give a considered offer with the necessary financial support to deposit the earnest money and pay the offered amount, if required."**

28. From the above said pronouncement of law by the Apex Court it is discernible that the Corporation or its officers are always required to act fairly and the absence of arbitrariness must reflect from their actions and orders.

29. The overruling of the decision in Mahesh Chandra's case as emphasized by the learned counsel for the appellant cannot be unduly strained to jettison the consideration of fair play and transparency in

the actions of the corporation and its officials even in their dealing with a defaulting debtor. The legislative intent behind enacting State Financial Corporation Act, 1951 has been to promote small and medium scale industries by establishing Financial Corporation to provide financial assistance to such industries. The purpose is definitely to safeguard their ruin by unscrupulous demands of ordinary money lenders and banks. Such Financial Corporation thus, must refrain from acting like proverbial money lender.

30. In the present case in absence of the pleading and evidence by the defendant corporation to the effect that the re- advertisement was done and there had been submission of tenders, participation by bidders out of which the tender of defendant no.6 was found to be most suitable, the order of sale dated 30.03.92 in favour of defendant no.6 cannot succeed the test of fairness and reasonableness, more so when after the order dated 05.02.92 of the tender committee for re-advertisement as no tender was then received; the whole process (if at all undertaken) of re-advertisement, receipt of tenders, the scrutiny and final acceptance on 26.03.92 of the tender of defendant no. 6 had been manifestly done within a very short period of time militating against the principle of adequate publicity to ensure maximum participation of bidders by granting them a practical period of time for effective participation in the sale.

31. The plaintiff has denied notice by the corporation before taking action under Section 29 of the Act. The defendant corporation however has pleaded that the notice has been validly served upon the plaintiff before taking action under Section 29 of the Act. The notice issued to the plaintiff on 17.11.84 has been brought on record as Ext.E/1 by the defendant. This notice has been issued under Section 29 and 30 of the Act directing the plaintiff to pay the dues of corporation within three months from the date of service of notice, failing which the corporation was at liberty to take over the possession of the mortgages assets or sale the same. However no evidence has been adduced on behalf of the corporation to show that the notice was actually served upon the plaintiff. The D.W.2 has stated in his deposition that the proof of service of notice was available with the corporation but from the records it does not appear that the said proof has ever been produced as evidence in the suit. No other evidence has been adduced by the defendant-corporation to establish that any other notice was issued and served upon the plaintiff even after 1984 and before taking possession of the mortgaged assets in the year 1992.

32. The applicability of the principles of natural justice in such cases cannot be ruled out as the action of the corporation in taking over or selling the unit of an industrial concern has serious consequence. It would be apposite to notice the observations made by

a Bench of Orisa High Court in this regard in the case of Kharavela Industries (Pvt.) Ltd. Vs. Orisa State Financial Corporation (AIR 1985 Orisa 153) which are as follows:

> **"…With the rising tempo of industrialization of the country it became necessary to enlarge the field of operation of State Financial Corporation and to meet the growing needs of industries to offer financial assistance to augment the resources sufficiently, the Act has been amended to enable the corporation to transact new kinds of business like guarantee loan raised by the industrial concern from schedule banks and guarantee default payment due from the industrial concern in connection with its purchase of goods within India. With those as primary object, the corporation has also been conferred the power to take over the industrial concern when the said concern makes any default in repayment of loan. There is no provision for appeal or review against the said decision of taking over and there cannot be any manner of doubt that the decision to take over involves civil consequences of a grave nature. A reading of Section 29 of the Act, in our opinion, does not in terms exclude the application of the principles of natural justice. In our view, therefore, the said rules must be complied with before the corporation takes action under Section 29 of the Act..."**

33. This enunciation of law leaves no manner of doubt that the corporation is required to give notice before proceeding to take action

under Section 29 of the Act. The issuance of such notice however is not to be merely an empty formality and the corporation is required to take every appropriate step to ensure the effective service of notice. Such step by the corporation would certainly discourage the litigation on this issue. However, in the present case in absence of evidence to establish service of notice upon the plaintiff there is no difficulty in holding that the corporation had acted without notice to the plaintiff.

34. In view of the above premised reasons and discussions, there is no scintilla of doubt left that the sale of the mortgage assets of the plaintiff on 30.03.92 to the defendant no.6 and taking over the possession of the same on 10.08.92 and handing them over to the defendant no.6 have been done in violation of the statutory provisions and well settled principles and thus cannot be upheld. This point is, accordingly, decided.

35. Point Nos.2 & 3: The plaintiff respondent has sought the relief that he is not liable to pay interest to the corporation on the loan amount and is also further not liable to pay any other item of claim. It is not in dispute that the plaintiff respondent has taken the loan of Rs. 1, 42,000/-. The said amount was also liable to incur interest at the agreed rate and the repayment was to be made according to the agreed schedule as mentioned in the memorandum dated 31.03.79(Ext.C). The Apex Court in the case of Jagdamba Oil Mills (Supra) has held

that the State Financial Corporation is an instrumentality of the State and deals with public money and while the corporation is expected to act fairly in the matter of disbursement of the loans, there is corresponding duty cast upon the borrowers to repay the instalments in time, unless prevented by insurmountable difficulty. Their lordships have further held that if the repayments are not received as per the scheduled time frame, equilibrium of the financial arrangements of the corporations will be distributed as they do not have at their disposal unlimited funds.

36. As held above the take over and sale of the mortgage assets of the plaintiff by the corporation are not sustainable, but nonetheless the said facts alone would not absolve the plaintiff from his liability to pay back his outstanding dues to the corporation in view of the observations of the apex court as above referred. The learned court below has committed error in holding that the plaintiff is not liable to pay any interest on the amount or any claim of the corporation. After setting aside the sale of the plaintiff's mortgaged assets in favour of the defendant no.6, and thereafter to defendant no.7 and 8 which had been made during the pendency of the suit, the learned court below though has directed the corporation to resume possession of the mortgaged assets from the defendant no.7 and 8 but has failed to balance the equities by issuing further direction with

regard to the realization of the outstanding dues of the corporation in the facts and circumstances of the case. It has been submitted on behalf of the plaintiff respondent that an amount of Rs. 1, 68,000/- has been deposited by him in the Execution Case No. 02/2008 pending before Sub Judge VIII, Sitamarhi which has been filed for execution of the impugned decree. It has been submitted by the learned counsel for the defendant nos. 7 and 8 that they have paid Rs. 17 lakh and odd and are in possession of the mortgaged assets after purchasing the same. The mortgage assets of the plaintiff has admittedly been sold firstly to the defendant no.6 on 30.03.1992, and thereafter to the defendant no.7 and 8 during the pendency of this suit, and the possession of the same has also been taken over by the corporation on 10.08.92. In view of these facts, it appears just and proper that, as the possession of the mortgaged assets has been taken over by the defendant-corporation, and thereafter sold to the defendant no.7 and 8 pendente lite then without disturbing that status, the plaintiff be given the liberty to repay the outstanding dues of the corporation alongwith interest and redeem the mortgage, in accordance with the terms of the contract, and on his failure to do so, the sale of the mortgaged assets in favour of the defendant nos. 7and 8 should be confirmed. Accordingly, it is held that the plaintiff is liable to repay the entire dues of the corporation alongwith interest, in terms of the contract between the

parties as outstanding against him and the corporation is directed to give reasonable opportunity of not less than six months to the plaintiff to redeem the mortgage assets after payment of outstanding dues in accordance with the contract, and on the plaintiff's failure to do so, the sale in favour of defendant nos. 7 and 8 shall stand confirmed. Till then, the status quo as existing today with regard to the mortgaged assets shall continue. The impugned judgment and decree of the learned court below is modified to the aforesaid extent. These two points are, accordingly, decided.

37. In the result this appeal is allowed in part and the impugned judgment and decree is affirmed with modification as aforementioned. In the facts and circumstances there shall be no order as to costs.

**(V. Nath, J)**

**Patna High Court.**
**Dated the 30th August, 2012.**
**Nitesh/N.A.F.R.**